

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JENNIFER YELLAND ,

Plaintiff,

v.

CERTECH, INC.,

Defendant.

Civil Action No. 3:24-cv-00498-JKM

**DEFENDANT CERTECH, INC.’S ANSWER AND AFFIRMATIVE
AND OTHER DEFENSES**

Defendant Certech, Inc. (“Certech”) hereby files its Answer and Affirmative and Other Defenses to Plaintiff Jennifer Yelland’s Complaint (“Complaint”) in accordance with the numbered paragraphs thereof, respectfully submitting as follows:

JURISDICTION AND VENUE

1. Certech denies the allegations in Complaint Paragraph 1, except admits that Plaintiff purports to bring claims against Certech for violations of U.S. law and the statutory and common laws of the Commonwealth of Pennsylvania.
2. Certech denies the allegations in Complaint Paragraph 2.
3. Certech admits the allegations in Complaint Paragraph 3.
4. Certech admits the allegations in Complaint Paragraph 4.

5. Certechn does not have knowledge or information sufficient to admit or deny the allegations in Complaint Paragraph 5, except admits that the EEOC issued a Notice of Right to Sue to Yelland on December 26, 2023 and Yelland filed her Complaint with 90 days of that date.

THE PARTIES

6. Certechn does not have knowledge or information sufficient to admit or deny the allegations in Complaint Paragraph 6, and therefore denies the allegations.

7. Certechn admits the allegations in Complaint Paragraph 7.

8. Certechn admits the allegations in Complaint Paragraph 8.

STATEMENT OF FACTS

9. Certechn admits the allegations in Complaint Paragraph 9.

10. Certechn does not have knowledge or information sufficient to admit or deny the allegations in Complaint Paragraph 10, and therefore denies the allegations, with the exception of admitting that Plaintiff is white.

11. Certechn admits the allegations in Complaint Paragraph 11.

12. Certechn denies the allegations in Complaint Paragraph 12.

13. Certechn denies the allegations in Complaint Paragraph 13, except admits that in recent years Certechn has experienced changes in its Wilkes Barre workforce as it has become more diverse and a small, but significant portion of that workforce primarily speaks Spanish.

14. Certech denies the allegations in Complaint Paragraph 14.
15. Certech denies the allegations in Complaint Paragraph 15, except admits that it hired Christopher Sanchez for a newly created supervisory role in May 2022.
16. Certech denies the allegations in Complaint Paragraph 16, except admits that Sanchez was a management employee.
17. Certech denies the allegations in Complaint Paragraph 17, except admits that Sanchez was hired into a new role and not as a replacement for Plaintiff.
18. Certech admits the allegations in Complaint Paragraph 18.
19. Certech denies the allegations in Complaint Paragraph 19, except admits that Sanchez is Hispanic.
20. Certech denies the allegations in Complaint Paragraph 20, except admits that fluency in Spanish was not a job requirement for Plaintiff's supervisor finishing position at the time she was promoted to that role.
21. Certech denies the allegations in Complaint Paragraph 21.
22. Certech denies the allegations in Complaint Paragraph 22.
23. Certech does not have knowledge or information sufficient to admit or deny the allegations in Complaint Paragraph 23, and therefore denies the allegations.

24. Certech does not have knowledge or information sufficient to admit or deny the allegations in Complaint Paragraph 24, and therefore denies the allegations with the exception of admitting that Plaintiff reported to Site Manager James Derrah.

25. Certech denies the allegations in Complaint Paragraph 25, except admits that Derrah informed Plaintiff that he may not have adequately communicated Sanchez' role and responsibilities to everyone and that the role was developed in connection with the recruiting of more employees whose primary language was Spanish.

26. Certech denies the allegations in Complaint Paragraph 26.

27. Certech denies the allegations in Complaint Paragraph 27.

28. Certech denies the allegations in Complaint Paragraph 28, except admits that Sanchez said that his role was a supervisory role, that he worked for Derrah, not Plaintiff, and that Spanish speaking was a skill set, not his primary function, and, as a result, some employees applauded.

29. Certech denies the allegations in Complaint Paragraph 29, except admits that Plaintiff claims another employee told her about an allegedly threatening comment by Sanchez.

30. Certech denies the allegations in Complaint Paragraph 30.

31. Certech denies the allegations in Complaint Paragraph 31.

32. Certech denies the allegations in Complaint Paragraph 32.

33. Certech denies the allegations in Complaint Paragraph 33.

34. Certech denies the allegations in Complaint Paragraph 34, except admits that Plaintiff's employment was terminated on July 11, 2022 for violating company policy.

35. Certech denies the allegations in Complaint Paragraph 35 except admits that Plaintiff's personnel documents contain no prior written disciplinary actions signed by Plaintiff for harassment or discrimination claims made against her.

36. Certech denies the allegations in Complaint Paragraph 36.

37. Certech denies the allegations in Complaint Paragraph 37.

38. Certech denies the allegations in Complaint Paragraph 38, except admits that Sanchez did assume the responsibilities of Plaintiff's former position following the termination of her employment.

39. Certech denies the allegations in Complaint Paragraph 39, except admits that it did not fill Sanchez' original supervisory role and that the position was later eliminated as part of a corporate reorganization.

40. Certech denies the allegations in Complaint Paragraph 40.

41. Certech denies the allegations in Complaint Paragraph 41.

42. Certech denies the allegations in Complaint Paragraph 42.

43. Certech denies the allegations in Complaint Paragraph 43.

44. Certech denies the allegations in Complaint Paragraph 44.

COUNT ONE

**HOSTILE WORK ENVIRONMENT IN VIOLATION OF TITLE VII OF
THE CIVIL RIGHTS ACT OF 1964 AND 42 U.S.C. SECTION 1981**

45. Certech incorporates all prior paragraphs herein as if set forth in full below.
46. Certech denies the allegations in Complaint Paragraph 46.
47. Certech denies the allegations in Complaint Paragraph 47.
48. Certech denies the allegations in Complaint Paragraph 48.
49. Certech denies the allegations in Complaint Paragraph 49.
50. Certech denies the allegations in Complaint Paragraph 50.
51. Certech denies the allegations in Complaint Paragraph 51.

COUNT TWO

**HOSTILE WORK ENVIRONMENT IN VIOLATION OF THE
PENNSYLVANIA HUMAN RELATIONS ACT**

52. Certech incorporates all prior paragraphs herein as if set forth in full below.
53. Certech denies the allegations in Complaint Paragraph 53.
54. Certech denies the allegations in Complaint Paragraph 54.
55. Certech denies the allegations in Complaint Paragraph 55.

COUNT THREE

UNLAWFUL TERMINATION IN VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 AND 42 U.S.C. SECTION 1981

56. Certech incorporates all prior paragraphs herein as if set forth in full below.
57. Certech denies the allegations in Complaint Paragraph 57.
58. Certech denies the allegations in Complaint Paragraph 58.
59. Certech denies the allegations in Complaint Paragraph 59.
60. Certech denies the allegations in Complaint Paragraph 60.
61. Certech denies the allegations in Complaint Paragraph 61.
62. Certech denies the allegations in Complaint Paragraph 62.
63. Certech denies the allegations in Complaint Paragraph 63.

COUNT FOUR

UNLAWFUL TERMINATION IN VIOLATION OF THE PENNSYLVANIA HUMAN RELATIONS ACT

64. Certech incorporates all prior paragraphs herein as if set forth in full below.
65. Certech denies the allegations in Complaint Paragraph 65.
66. Certech denies the allegations in Complaint Paragraph 66.
67. Certech denies the allegations in Complaint Paragraph 67.
68. Certech denies the allegations in Complaint Paragraph 68.

69. Certech denies the allegations in Complaint Paragraph 69.

70. Certech denies the allegations in Complaint Paragraph 70.

COUNT FIVE

RETALIATION IN VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 AND 42 U.S.C. SECTION 1981

71. Certech incorporates all prior paragraphs herein as if set forth in full below.

72. Certech denies the allegations in Complaint Paragraph 72.

73. Certech denies the allegations in Complaint Paragraph 73.

74. Certech denies the allegations in Complaint Paragraph 74.

75. Certech denies the allegations in Complaint Paragraph 75.

76. Certech denies the allegations in Complaint Paragraph 76.

77. Certech denies the allegations in Complaint Paragraph 77.

COUNT SIX

RETALIATION IN VIOLATION OF THE PENNSYLVANIA HUMAN RELATIONS ACT

78. Certech incorporates all prior paragraphs herein as if set forth in full below.

79. Certech denies the allegations in Complaint Paragraph 79.

80. Certech denies the allegations in Complaint Paragraph 80.

81. Certech denies the allegations in Complaint Paragraph 81.

82. Certech denies the allegations in Complaint Paragraph 82.

83. Certech denies the allegations in Complaint Paragraph 83.

84. Certech denies the allegations in the Complaint's WHEREFORE Paragraphs A—D and that Plaintiff is entitled to any damages in this matter, including without limitation, back pay, front pay, compensatory damages, punitive damages, interest, attorney's fees, costs and disbursements or any other further relief from the Court.

85. Certech admits that Plaintiff seeks a jury trial.

AFFIRMATIVE AND ADDITIONAL DEFENSES

Certech asserts the following affirmative and additional defenses to Plaintiff's claims, By asserting these defenses, Certech does not concede that it has the burden of proof as to any such defense. Certech also reserves the right to raise any and all other defenses that may become evident during discovery and/or during any other proceeding in this action.

FIRST DEFENSE

Plaintiff has failed, in whole or in part, to state a claim upon which relief can be granted.

SECOND DEFENSE

Plaintiff's claims, in whole or in part, are barred by the unclean hands doctrine.

THIRD DEFENSE

Plaintiff's damages, in whole or in part, are barred to the extent that she has failed to mitigate those damages.

FOURTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrines of laches, waiver and estoppel.

FIFTH DEFENSE

Plaintiff's claims are barred, in whole or in part, because none of the alleged acts or omissions of Certech were the proximate cause of any injuries allegedly sustained by Plaintiff.

SIXTH DEFENSE

Certech may not be held liable for any alleged injuries or damages resulting from the effects of Plaintiff's preexisting emotional, psychological, or physical conditions not the result of any act or omission of Certech.

SEVENTH DEFENSE

Plaintiff's claims are offset by any earnings, severance pay, unemployment compensation, and any other pay or benefits as required by law.

EIGHTH DEFENSE

To the extent that any recovery of Plaintiff's Complaint may be either completely or substantially barred due to after-acquired evidence, any recovery to

which Plaintiff may be otherwise entitled must be appropriately offset.

NINTH DEFENSE

Plaintiff's claim for punitive damages is barred because Certech did not act with malice or with reckless indifference to the rights of Plaintiff and because Certech always acted in good faith with respect to Plaintiff.

TENTH DEFENSE

All employment decisions or actions taken or made regarding Plaintiff were at all times motivated by legitimate, non-discriminatory, non-retaliatory and lawful factors, and Certech at no time acted in an unlawful manner in connection with any decision regarding Plaintiff. All employment decisions were based on legitimate business factors and not any legally protected category.

ELEVENTH DEFENSE

Plaintiff's claims for damages are subject to all applicable statutory caps and limitations.

TWELFTH DEFENSE

Certech cannot be held liable for acts of its employees that it neither participated in, nor authorized, nor ratified.

THIRTEENTH DEFENSE

Plaintiff's claims should be dismissed, in whole or in part, because Certech's employment standards and criteria are job-related and consistent with business necessity.

FOURTEENTH DEFENSE

Plaintiff did not have contract for employment with Certech and her employment at all times was at will.

FIFTEENTH DEFENSE

To the extent that Plaintiff purports to allege a claim or claims for physical or mental and emotional distress, including claims for recovery of any medical expenses thereby incurred, said claims are barred by the exclusive remedy provisions of the Pennsylvania Workers' Compensation Act.

SIXTEENTH DEFENSE

Plaintiffs' claims for relief are barred, in whole or in part, because Certech engaged in good faith efforts to comply with applicable laws and otherwise acted within the scope of the exceptions to vicarious liability for punitive damages enumerated by the Supreme Court in *Kolstad v. American Dental Association*, 527 U.S. 526 (1999).

SEVENTEENTH DEFENSE

Plaintiff's claims are barred because, at all relevant times, Certech maintained effective anti-discrimination, anti-harassment, anti-retaliation and reporting procedures policies, all of which Certech disseminated to its employees and provided appropriate training on those policies to its employees, at all times relevant to this matter.

EIGHTEENTH DEFENSE

Plaintiff's claims fail in whole or in part because she did not notify Certech of any purported discrimination, harassment or retaliation or avail herself otherwise of Certech's policies and procedures to report discrimination, harassment and retaliation complaints.

NINETEENTH DEFENSE

Certech would have taken the same actions toward Plaintiff in the absence of any alleged impermissible motivating or substantial factor.

TWENTIETH DEFENSE

To the extent that Plaintiff has failed to exhausted her administrative remedies, such claims are barred.

TWENTY-FIRST DEFENSE

To the extent that Plaintiff has filed claims outside the applicable statutes of limitations, such claims are barred.

WHEREFORE, Defendant Certech, Inc. respectfully requests that the claims in the Complaint be dismissed in their entirety with prejudice, that judgment be entered in favor of Certech and against Plaintiff, and that Certech be awarded its costs and expenses, including costs and counsel fees, and such other relief as the Court deems just and proper.

Dated: May 24, 2024

Respectfully submitted,



Bethany S. Wagner
PA ID No. 307825
bethany.wagner@ogletree.com

OGLETREE DEAKINS
One PPG Place, Suite 1900 |
Pittsburgh, PA 15222
Telephone: 412-315-6040
Facsimile: 412.232-1799

*Attorneys for Defendant
Certech, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this 24TH day of May 2024, a copy of the foregoing DEFENDANT CERTECH, INC'S ANSWER AND AFFIRMATIVE AND OTHER DEFENSES was filed using the Middle District of Pennsylvania's ECF system, through which this document is available for viewing and downloading, causing a notice of electronic filing to be served upon the following counsel of record for

Plaintiff:

George R. Barron
George R. Barron, Esquire
88 North Franklin Street
Wilkes-Barre, PA 18701
grb@georgebarronlaw.com



Bethany S. Wagner